

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

TIMOTHY MUNRO ROBERTS,  Petitioner,  vs.  J.W. COX, in his capacity as warden of Yankton Federal Prison Camp,  Respondent.	4:20-CV-04187-KES  ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL
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Petitioner, Timothy Munro Roberts, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Docket 1. After Roberts was transferred to a residential reentry center on prerelease custody, this court dismissed his petition as moot and denied his request for immediate release. Docket 75. Judgment was entered against Roberts, and he filed a notice of appeal. Dockets 76, 77. Roberts now files a motion for leave to proceed in forma pauperis on appeal. Docket 78.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the Prison Litigation Reform Act do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1),

(3). Further, under Federal Rule of Appellate Procedure 24(a)(3), “[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization” unless the appeal is not taken in good faith or the court “finds that the party is not otherwise entitled to proceed in forma pauperis[.]”

It appears that Roberts’s appeal is taken in good faith. After review of Roberts’s motion, the court finds that § 1915(b)(4) applies and waives his initial partial filing fee.

IT IS ORDERED:

1. That Roberts’s motion for leave to proceed in forma pauperis on appeal (Docket 78) is granted.

Dated March 24, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE